

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.384 OF 2004**

The State of Maharashtra)Appellant/Complainant

V/s.

Madhukar Gulabrao Shelke,)
Age 35 years, Occ.: Teacher,)
R/at F/2, 727, MHADA, Takshasheela Sant)
Dnyaneshwar Nagar, Pimpri, Pune)Respondent/Accused

Ms. Anamika Malhotra, APP for State – Appellant.

Mr. Chandansingh Shekhawat a/w. Mr. Amit Patil and Mr. Abhishek Khandelwal
i/b. Parinam Law Associate for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 21st FEBRUARY 2020**

ORAL JUDGMENT :

1 This is an appeal challenging part of the order and judgment dated 8th December 2003 by which the 15th Ad-hoc Additional District and Assistant Sessions Judge, Pune, convicted respondent of offence under Section 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*) of Indian Penal Code but acquitted respondent of offences under Section 306 (*Abetment of suicide*) and Section 323 (*Punishment for voluntarily causing hurt*) of Indian Penal Code (IPC). The acquittal part is what is challenged in this appeal.

2 The Apex Court in ***Ghurey Lal V/s. State of U.P.***¹ has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It

1. (2008) 10 SCC 450

can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to

acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***² has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

The Apex Court in ***Ramesh Babulal Doshi V/s. State of Gujarat***³ has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

2. (2014) 5 SCC 730

3. 1996 SCC (cri) 972

3 I have perused the impugned judgment. I find the Trial Court was correct in acquitting respondent of offences under Section 306 read with Section 323 of IPC. There is no evidence whatsoever that respondent wanted accused to commit suicide and instigated accused to commit suicide. It is settled law that what the deceased felt is not important but what accused or respondent wanted the deceased to do is important. None of the evidence satisfies the ingredients required under Section 306 of IPC. There is no evidence for Section 323 of IPC also. Ms. Malhotra, learned APP, true to her role as an officer of the Court, concurred with the conclusions of this Court.

4 As held in *Ramesh Kumar V/s. State of Chhattisgarh*⁴, Section 498-A and Section 306 of IPC are independent and constitute different offences. Though depending on the facts and circumstances of a case, subjecting a woman to cruelty may amount to an offence under Section 498-A does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned. In my opinion, as noted earlier, there is no evidence and material available on record wherefrom an inference of the respondent having abetted the commission of suicide of the deceased may necessarily be drawn.

5 In the circumstances, appeal dismissed.

6 I must hasten to add that I have not considered the issue of conviction under Section 498-A of IPC since an appeal is pending in the

4. 2001 (9) SCC 618

Sessions Court, Pune. The Sessions Court, Pune, shall independently consider the appeal and dispose the same on its merits.

7 Within one week from today, the records and proceedings should be sent to the Sessions Court, Pune and the Sessions Court, Pune, is requested to dispose the appeal within one month of receiving the records and proceedings since the appeal pending in the Sessions Court is of the year 2004.

(K.R. SHRIRAM, J.)